

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 157 OF 1995

1. Sudhir Suresh Kulkarni)
2. Chandrakant Bhagwantrao Bhome)
Both adults, Occ: Service (Education),)
residents of Wada, Dist : Thane) Petitioners

Versus

State of Maharashtra)....Respondents

Shri R.S. Apte i/b N.R. Bubna for the petitioners.

Shri Shailesh More, APP for the State.

CORAM: V.M. KANADE, J.

DATE : 22nd September, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the petitioners and the learned APP for the State.

2. Petitioners are challenging the judgment and order passed by the J.M.F.C., Wada in Criminal Case No.50 of 1989

whereby the learned Magistrate was pleased to convict the petitioners under section 324 read with section 34 of the Indian Penal Code and sentence them to undergo rigorous imprisonment for three months and to pay fine of Rs 500/- and, in default, to undergo simple imprisonment for one month. They were also convicted for the offence punishable under section 147 and 148 of the Indian Penal Code. The Sessions Judge, Thane, however, acquitted them of the offence punishable under sections 147 and 148, confirming the order of conviction by the Judicial Magistrate, First Class under section 324 read with section 34 of the Indian Penal Code. Being aggrieved by the aforesaid two orders passed by the lower Courts, the petitioners have preferred this Criminal Revision Application.

3. Brief facts which are relevant for the purpose of deciding this Criminal Revision Application are as under:-

4. The petitioners alongwith three others were tried before the Judicial Magistrate, First Class, Wada and it was alleged that they had committed an offence punishable under

sections 147, 148, 324 and 504 read with section 34 of the Indian Penal Code. It was alleged that they had assaulted P.W.1- Mohan Patil who was newly elected on the Managing Committee and that when the members of the newly elected body went to the School, all accused assaulted P.W.1. It was alleged that the Petitioner No.2 assaulted P.W. No.1 with a knife on both of his wrists and other accused assaulted P.W. No.1 with fist blows. The complaint was lodged against accused on 12/06/1989. Then charge-sheet was filed and, thereafter, both the Courts have passed the aforesaid orders.

5. The learned Counsel appearing on behalf of the petitioners vehemently urged that there was a dispute between the two groups and a complaint and counter-complaint was filed by both the parties. He submitted that the Petitioner No.1 had established a School in tribal area after he had taken lot of efforts for establishing the School and the rival group had falsely implicated the Petitioners. He submitted that there was a discrepancy in the statements of witnesses and there was also a discrepancy between ocular evidence and other evidence which was brought on record.

He further submitted that the Investigating Officer was not examined. He further submitted that the blood-stained clothes were not sent for chemical analysis. He further pointed out that the shirt of P.W.1 was not torn but had remained intact even after the assault. He further submitted that the doctor in his evidence also had made improvements. He further submitted that therefore, the statements of these witnesses could not have been relied upon by both the lower Courts. He submitted that the testimony of these interested witnesses ought to have been discarded and the petitioners were entitled to get a benefit of doubt. He further submitted that, in any case, so far as petitioner No.1 is concerned, there was no evidence to show that he shared the object or intention of petitioner No.2. He submitted that the oral evidence against him is that he had given fist blows to P.W.1 and that the medical report did not indicate that P.W.1 had been assaulted by giving fist blows.

6. The learned APP vehemently opposed the submissions made by the learned Counsel for the Petitioners. He submitted that there is concurrent finding of fact recorded by

both the courts below. He submitted that, therefore, on this ground alone, Criminal Revision Application was liable to be dismissed.

7. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the Petitioners. The scope and power of this Court while exercising its revisional jurisdiction is very limited. This Court cannot sit as a Court of Appeal and reappreciate the evidence which is on record and only if there is a material irregularity or illegality committed by the lower Courts, this court can, in revisional jurisdiction, correct the error committed by the lower Courts. In the present case, I have perused the evidence which is on record and the findings which are recorded by both the Courts below. In my view, there is no infirmity or illegality in the orders passed by both the Courts below except to the extent of applying the provisions of section 34 of the IPC while holding Petitioner No.1 guilty of the offence punishable under section 34. If two views are possible and one view is taken by the Lower Courts, this Court should not substitute its own view to the view taken by the Lower Courts. So far

as the Petitioner No.1 is concerned, in my view, both the Courts below have erred in applying the provisions of section 34 of the Indian Penal Code holding the petitioner No.1 guilty of the offence punishable under section 324 read with 34. It is an admitted position that the Petitioner No.2 suddenly whipped out a knife and assaulted P.W.1 on his wrists. There is no material on record to indicate that the Petitioner No.1 was aware that the Petitioner No.2 was carrying a knife or that he was aware that the Petitioner No.2 was going to use this knife on P.W.1. If these facts are taken into consideration, in my view, it is difficult to hold that petitioner No.1 shared the intention of Petitioner No.2. The findings of both the Courts below that Petitioner No.1 was guilty under section 34 of the Indian Penal code alongwith Petitioner No.2, having committed the offence under section 324 of the Indian Penal Code cannot be accepted and, therefore, the said findings are set aside. The fact, however, remains that all the witnesses had seen the Petitioner No.1 assaulting P.W.1 with fist blows. Therefore, it will have to be held that P.W.1 is guilty for committing offence punishable under section 323 of the Indian Penal Code causing simple hurt to

P.W.1. The conviction of Petitioner No.1 under section 324 is set aside and is altered to section 323 I.P.C.

8. So far as the sentence is concerned, taking into consideration the facts and circumstances of the case and also the fact that the counter-complaint was filed against the liable group and that the accused were acquitted by the trial court of the said offence and further the incident in question had taken place almost 17 years ago and thereafter no untoward incident had taken place between the two groups, in my view, the petitioners are entitled to get benefit under the Probation of Offenders Act, 1958.

9. In the result, the following order is passed:-

ORDER

Criminal Revision Application is partly allowed. Conviction and sentence of Petitioner No.1 is altered from section 324 IPC to section 323 IPC.

Petitioners are given the benefit of section 4 of the

Probation of Offenders Act and they are directed to execute a bond of good behavior in a sum of Rs 5000/- each upto six months. Sentence awarded by both the lower Courts is set aside. Conviction of the Petitioners, however, is confirmed.

Criminal Revision Application is accordingly disposed of.

(V.M. KANADE, J.)